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 In the Matter of the Generic Proceeding)
 Concerning Electric Restructuring Issues)

Docket No. E-00000A-02-0051

E-00000A-01-0630

AZ CORP COMMISSION
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Comments of the
National Energy Marketers Association

The National Energy Marketers Association (NEM)¹ hereby submits its comments on the Commission's current inquiry into retail electric competition. At the recent workshop in the instant proceeding the following issues were raised for comment: 1) potential risks and benefits of retail electric competition; 2) whether or not competition is in the public interest; 3) provider of last resort; 4) whether the current rules are adequate; 5) costs of competition; and 6) other issues. NEM submits these comments to strongly support the implementation of retail electric competition for the benefit of the consumers of Arizona and to offer recommendations on market structure, default service pricing, and retail best practices that can facilitate the development of a robust retail electric market in the State.

I. Retail Electric Competition Shifts Risk to Energy Marketers and Yields Significant Benefits to Consumers

Implementing retail electric competition and imparting the discipline that market-based policies bring to the energy market, will significantly mitigate risks and costs borne by current captive utility customers. Captive utility ratepayers have been historically

¹ NEM is a non-profit trade association representing wholesale and retail marketers of natural gas, electricity, as well as energy and financial related products, services, information and advanced technologies throughout the United States, Canada and the European Union. NEM's membership includes independent power producers, suppliers of distributed generation, energy brokers, power traders, electronic trading exchanges and price reporting services, advanced metering, demand side management and load management firms, billing, back office, customer service and related information technology providers. NEM members are global leaders in the development of enterprise solution software for energy, advanced metering, telecom, information services, finance, risk management and the trading of commodities and financial instruments.

obligated to fund the higher costs and risks associated with cost-plus utility investments. The restructuring of the natural gas and electricity industries at the federal and state levels was initiated in large part because the historical cost-of-service approach to energy supply and demand facilitated a steady increase in the costs for energy to the ultimate consumer, even in times of declining wellhead prices. Likewise, regulated rates are a poor proxy for the efficiencies, innovations and potential price savings yielded by competitive markets. Competitive market participants are expert at controlling supply-related risks, and they do so without the requisite guaranteed return of and return on utility investments, the risks of which are borne by captive ratepayers.

NEM submits that the reallocation of utility capital, credit and resources from competitive commodity-related investments into distribution and transmission investments will increase the long-term reliability of the Arizona energy market. Moreover, NEM submits that one hundred and fifty years of contract law can be relied upon to meet or beat the reliability of regulatory mandates. Regulatory mandates inevitably lead to higher costs than competitive market-based supply and demand-side investments.

A. Pricing, Options and Innovations

The benefit of competition at the retail level can be encapsulated by the word "choice." Consumers benefit from competitive markets because of the increased availability of a slate of energy choices such as different pricing options including fixed rate products, variable rate products, and products that guarantee a percentage savings from the utility rate that a consumer can choose based on their individualized need for price certainty

versus short or long term savings. NEM notes a CERA study found that, “[t]he majority of U.S. consumers have paid less for electricity since the onset of power system deregulation in 1997, achieving total savings of about \$34 billion compared with the costs if traditional regulation had continued.”² Professor Paul Joskow found that for the period of 1996 to 2004, “real residential prices fell more in states that implemented retail competition programs than in those that did not.”³ Specific examples from leading deregulated markets include Texas and New York. In Texas it was determined that, “the competitive market has provided customers with prices that were significantly below the estimated rates that would have been in effect in a regulated environment. Even customers who did not switch to a competitive rate have benefited from the introduction of retail competition. During each of the years 2002 through 2005, the PTB [Price to Beat] was lower than the estimated regulated rates in both service areas.”⁴ In New York, the typical residential retail customer experienced a drop in total real electric price of an average of 16% between 1996 and 2004, and most commercial and industrial customers benefited from similar energy bill decreases.⁵

Retail competition encourages the availability of new and innovative offerings including green products and energy management services. Retail choice can also offer additional benefits such as the provision of retail services such as billing, metering and customer

² Cambridge Energy Resource Associates, Press Release, “Power Deregulation Saved \$34 Billion, Benefited Majority of U.S. Consumers Over Past 7 Years: CERA Study,” October 19, 2005 (discussing findings of study titled, “Beyond the Crossroads: The Future Direction of Power Industry Restructuring”).

³ Markets for Power in the United States: An Interim Assessment, The Energy Journal, 2006.

⁴ Commission’s Legislative Report on Electricity Pricing in Competitive Retail Markets in Texas, Project 32198.

⁵ New York State Department of Public Service, Staff Report on the State of Competitive Energy Markets: Progress to Date and Future Opportunities, March 2, 2006, page 2. See also Joskow, Markets for Power in the United States: An Interim Assessment, The Energy Journal 2006, page 27, Figure 6 (showing approximate 14% decrease in real residential prices from 1996-2004).

care on a more efficient and less costly basis, procuring wholesale power at a lower price than utilities and with superior hedging expertise, utilization of sophisticated technologies to permit consumers to have greater control of their energy usage.

B. Impact on State Budgets and Local Competitiveness

Retail competition can permit state governments to reduce expenditures on energy and related services. In many cases, significantly. Lower energy prices increase the competitiveness of local business, attract new business to the state, increase economic activity and operate in a manner similar to a tax rollback for businesses and consumers alike. Consequently, state economies and budgets will benefit in a number of ways from restructuring natural gas and electricity markets. The larger a state's budget, the more it can save by restructuring its energy markets.

C. Synergy Between Retail and Wholesale Markets

The successful development of retail markets can have important consequences for the wholesale market. "It is insufficient to provide accurate price signals only to wholesale buyers (i.e., retail suppliers), and not retail customers, because a wholesale buyer's demand at any point in time is directly derived from retail demand of its customers."⁶ Furthermore, "for all of the expected benefits of retail competition to be realized, it is imperative that wholesale markets also be competitive."⁷ This is because, "the benefits of

⁶ Report by the Federal Trade Commission Staff, Competition and Consumer Protection Perspectives on Electric Power Regulatory Reform: Focus on Retail Competition, September 2001, at page 33 [hereinafter "FTC Report"].

⁷ FTC Report, at page 13.

retail competition and wholesale competition are mutually reinforcing. Neither benefits customers as much when either is implemented alone."⁸

Retail marketers positively impact wholesale markets by increasing the number of market participants beyond the traditional utilities. Increasing purchasing activity in this fashion increases market liquidity and provides generators with an increased opportunity to "lay off risks in the market at competitive prices."⁹ "By successfully selling consumers price-sensitive energy contracts and contracting forward for supplies to meet their obligations to retail customers, ESPs' wholesale market activities could reduce wholesale market price volatility and help to mitigate wholesale market power problems, especially during tight supply situations."¹⁰

II. Competition is in the Public Interest

NEM strongly believes that energy competition, at the retail and wholesale level, is in the public interest. The benefits of competition discussed in the previous section of these comments bear this out. Moreover, consumers, businesses, regulators and legislators are increasingly reaching the same conclusion. For instance, the NYPSC issued a Retail Policy Statement setting forth its Vision Statement as follows:

The provision of safe, adequate, and reliable gas and electric service at just and reasonable prices is the primary goal. Competitive markets, where feasible, are the preferred means of promoting efficient energy services, and are well suited to deliver just and reasonable prices, while also providing customers with the benefit of greater choice, value and innovation. Regulatory involvement will be tailored to reflect the competitiveness of the market.¹¹

⁸ Id.

⁹ Paul Joskow, Why Do We Need Electricity Retailers? Or Can You Get it Cheaper Wholesale?, February 13, 2000, at 23 [hereinafter "Joskow 2000"].

¹⁰ Id.

¹¹ Case 00-M-0504, Statement of Policy on Further Steps Toward Competition in Retail Energy Markets, August 25, 2004, at page 18.

The success of the implementation of the NYPSC's Retail Policy Statement is underscored by the robust consumer participation and marketer participation statistics achieved in that jurisdiction. As of February 2008, over one million New York customer accounts were participating in electric choice, representing 15.4% of accounts and 43.8% of load.¹² In Spring 2007, the NYPSC reported that over 100 energy marketers were eligible to do business in the State, and that in each of the six major combined utility service territories there were at least six electric and six gas marketers actively serving customers.¹³ Marketers have made a significant resource investment in the New York utility service territories to serve consumers with an increasingly expanding array of energy products and services. And energy competition has engendered significant price savings for New York consumers as well as noted in Section I of these comments.

Now, perhaps more than ever, competitive providers are uniquely positioned to provide the energy innovations that consumers are demanding and thereby promote the public interest. One of the reasons for energy deregulation is the interplay of companies that are flexible and nimble enough to design and price customized products that are tailored to meet customer needs. There are a host of energy functions and products that are becoming increasingly competitive in nature. By implementing choice programs that facilitate competitive entry and participation, the Commission will ensure a role for competitive providers to offer these products and thereby enhance the ability to reach

¹² Specifically, as of February 2008 over fourteen percent of residential electric customers, and fifty eight percent of large commercial and industrial electric customers have migrated.

¹³ NYPSC Case No. 07-M-0458, Review of Retail Access Policies, issued April 24, 2007, at page 4. The U.S. Energy Information Administration reported, with respect to retail natural gas markets, "New York has by far the largest number (46) of active marketers, with customers in some parts of the State having a choice of more than 20 marketers and 50 different price offerings." U.S. Energy Information Administration, Natural Gas Residential Choice Programs, U.S. Summary 2007, available at: http://www.eia.doe.gov/oil_gas/natural_gas/restructure/state/us.html

related goals for increased energy efficiency, demand reduction and reliance on alternative energy resources. For example, marketers have and will continue to play an instrumental role in crafting products to achieve demand response goals for consumers. Likewise, competition in energy efficiency programs should result in enhanced opportunities for consumer participation and customized offerings. Current environmental goals coupled with an energy pricing crisis is, like past crises, a “wake up” call to realize more demand reduction, efficiency and infrastructure upgrades as well as environmental impact mitigation. However, the most efficient and equitable means to accomplish these multi-purpose policy goals requires a greater reliance on both price discipline and the statewide economies of scale that marketers can bring to help the State accomplish these goals. Hundreds of market-capitalized entities competing for millions of new consumers lower the cost of capital and therefore the delivered price of energy than a few state-backed cost-plus regulated entities.

III. Provider of Last Resort

The proper design of the Provider of Last Resort function is interrelated with the issues of utilities exit from the merchant function, market-based commodity pricing and unbundled delivery rates. NEM’s recommendations on these interrelated issues are offered below:

A. Utility Exit from Merchant Function/Utility Market-Based Pricing

Transitional retail market structures, whereby utilities provide default service at artificially low, subsidized rates, has proven unworkable and anticompetitive. The solution to this problem is for utilities to exit the merchant function. In the interim, as this occurs, the utility default rate should utilize market-based pricing. Marketers are

unable to defer losses, nor do they have guaranteed revenue streams upon which their cost of funds are based, and most importantly marketer prices are not protected by the state. A utility should not be permitted to compete as a monopoly in its own exclusive franchise territory. Hedging and risk management are competitive services. Consumers should not be required to take risks that the market is willing to bear.

Utility pricing should properly be based on fully allocated embedded costs¹⁴ to serve retail load and offered to all consumers equitably with a commodity pass through factor that replicates current market conditions as closely as possible. For large customers, time of day rates¹⁵ are appropriate. Additionally, as long as a utility is providing commodity-related services to small commercial and residential customers, the commodity component of the “price to beat” should start with a monthly-adjusted, market-based rate to which should be added a utility’s fully allocated embedded and projected stranded costs associated with providing all of the otherwise competitive commodity related products, services, information and technologies currently bundled in full service rates.

¹⁴ See New York Public Service Commission, Case 00-M-0504, Statement of Policy on Unbundling and Order Directing Tariff Filings, August 25, 2004.

¹⁵ The NYPSC required utilities to implement real time pricing (RTP) for their large customers. The Commission found that,

Under RTP arrangements, however, large customers can benefit themselves by responding to RTP pricing signals and avoiding high-cost peak usage. If enough large peak usage customers avail themselves of that benefit, overall peak period usage will fall, natural gas consumption will decline, and all customers will benefit from lower LBMP prices.

Moreover, because RTP conveys more accurate price signals to consumers, their demand management response can be more efficient. In response to those efficiencies, investments in generation supply options will also be made more efficiently. And, at times of peak load when market power can be a concern, RTP and the demand response it encourages can serve as a valuable addition to existing market power mitigation measures.

New York Public Service Commission, Case 03-E-0641, ORDER INSTITUTING FURTHER PROCEEDINGS AND REQUIRING THE FILING OF DRAFT TARIFFS, issued September 23, 2005, at pages 4-5.

B. Utility POLR Structure

In the interim period as utilities are transitioned out of the merchant function, it is vital to structure utility Provider of Last Resort (POLR) terms and rate design to be a truly last resort service. It should only be used in emergency or special circumstances. Customers should be eligible, not required, to receive POLR service when they are no longer being served by a competitive provider, i.e., if the customer's provider stopped doing business in the state.

POLR service should be structured to encourage minimum stays not mandated minimum terms. POLR service should be structured to be 24 hour/7days a week/365 days a year retail full risk, no notice service. There should be no incentive for any class of customer to use the POLR option as a long-term standard service option. In fact, if structured properly the cost of such last resort service should reflect the associated high costs and high risks of emergency, no notice retail service. Accordingly, it is important to prohibit the POLR entity from mandating that a customer enroll for a minimum term as a condition of service in the competitive market. If customers are required to enroll for minimum service terms, the customers will be unable to shop for other competitively priced services or switch to take advantage of other types of services. Furthermore, the costs of providing POLR service vary by customer class and service prices should be structured to reflect those differences. Additionally, it is vital that the full costs and risks associated with each class of service be included in the POLR commodity price.

C. Unbundled Delivery Service Rate

Consumers do not receive adequate price signals in the form of "shopping credits" for use in the competitive retail market. Utilities should remove all costs related to commodity sales from delivery service charges and place them in their commodity price. Costs should follow causation, e.g., all costs associated with POLR service should be in POLR rates and all costs associated with fully bundled sales service should be in fully bundled sales rates. These costs include: transmission charges, scheduling and control area services, distribution line losses, a share of pool operating expenses, risk management premiums, load shape costs, commodity acquisition and portfolio management, working capital, taxes, administrative and general expenses, metering, billing, collections, bad debt, information exchange, regulatory compliance, and customer care. These costs are incurred by energy marketers and are included in energy marketer pricing. If these same costs are also included in utility pricing it results in a double payment of these costs by consumers.

IV. Adequacy of Current Rules

It is the recommendation of NEM and experience of its members that the implementation of uniform business rules and practices across the utilities in a State permits energy marketers to enter a new jurisdiction on a more cost effective basis and increases the economies of scale associated with serving consumers located in different service territories. If market participants are forced to divert scarce resources to customize billing, back-office, and customer care facilities, and to develop specialized knowledge of different information systems and business rules in each service territory and jurisdiction, it drives energy prices higher, and in some instances is a disincentive for some marketers

to enter a specific state retail market. Uniformity of these business rules and processes permit competitive marketers to enter more utility service territories on a cost effective basis, reduce their operating costs, and ultimately, focus more resources on better serving current and future customers.

V. Costs of Competition

To the extent that utilities incur costs to implement retail electric competition, such costs should be recovered from all consumers on a competitively neutral basis through a non-bypassable charge. Migrated consumers should not be penalized with an exit fee for taking service from a competitive provider. Utility costs of implementation should be aggressively managed and prudently incurred in furtherance of facilitating consumer participation in energy choice.

VI. Other Issues

As the Commission continues its inquiry into retail electric competition, there are additional best practices and programs that should be considered, in addition to the fundamentals of market structure and default service pricing, that can enhance the success of a retail choice program. These include utility purchase of receivables programs, marketer referral programs and the institution of a Commission market ombudsperson. These concepts are explained in detail herein.

A. Purchase of Receivables

As long as a utility remains in the competitive commodity market, the efficient use of its legacy billing infrastructure through the implementation of a purchase of receivables program is to the benefit of all consumers and should be considered a best practice,

particularly so long as uncollectibles remain in utility delivery rates. Utilities and Public Service Commissions in many jurisdictions have implemented utility purchase of receivables (POR) programs to facilitate the development of competitive retail energy markets, particularly for mass market consumers.¹⁶ The NYPSC identified utility purchase of receivables as a “best practice” in its Retail Policy Statement. The NYPSC found that, “A major success in the residential market . . . is the utility purchase of accounts receivable to simplify ESCO operations and reduce ESCO overheads.”¹⁷ Recently, the NYPSC reaffirmed the importance of POR as a program, “essential to maintaining a competitive market structure.”¹⁸ Indeed, the NYPSC found that POR programs coupled with utility consolidated billing, “are needed to enable ESCOs to bill and/or receive payments from customers on an equal footing with the utility service providers.”¹⁹ Migration statistics from New York discussed above illustrate the impact of the best practices identified in the Retail Policy Statement.

When utilities offer to purchase receivables, this one rule change has a significant impact on the cost to serve consumers that may otherwise be uneconomic to serve in a competitive marketplace. POR provides consumers with greater access to competitive offerings because it significantly minimizes consumer credit ratings as an impediment in customer enrollment. Utility implementation of POR eliminates the cost of consumer

¹⁶ Looking to other jurisdictions, the Illinois legislature recently required that electric utilities in the state implement POR.¹⁶ Pennsylvania, Connecticut, Massachusetts, and Maryland have all recently adopted or are in the process of adopting regulations to support POR. Other states have supported or have ordered POR in their electricity and/or natural gas markets for several years, such as Consumers Energy and Detroit Edison in Michigan (for gas choice), PSEG, SJG and NJNG in New Jersey, NIPSCO in Indiana, Kentucky and Ohio. A key feature of such programs is allowing the utility to treat the purchased receivables as their own for collections and disconnection purposes.

¹⁷ Case 00-M-0504, Retail Policy Statement, issued August 25, 2004, at page 15.

¹⁸ Case 07-M-0458, Order Determining Future of Retail Access Programs, issued October 27, 2008, at page 8.

¹⁹ Id.

credit checks for marketers, particularly since the utility already has payment histories of customers and mechanisms in place to manage events of customers' inability to pay. Moreover, POR enhances the ability of the competitive marketplace to serve credit-challenged customers.

The implementation of a POR program should have virtually no additional cost to the utility or the consumer. Importantly, allowing a utility to maximize the use of its legacy billing system avoids significant duplication of infrastructure costs, costs that have already been paid by ratepayers. In not requiring marketers to develop duplicative systems and processes it promotes efficiencies, reduce costs to consumers, and reduces barriers to entry.

POR programs facilitate market development because they limit the competitive disadvantages that result from guaranteed utility bad debt cost recoveries and the ability, often the exclusive ability, to collect bad debts by shutting off a captive ratepayers' energy supply. The utilities' ability to disconnect service is a strong deterrent, and they should be able to exercise this right attendant with customer non-payment in a Commission-approved POR program.

The appropriate remuneration to the utility offering a POR program can be the subject of different approaches: 1) Application of zero discount rate, reflective of the circumstance that utilities currently recover bad debt in their delivery rates; 2) Application of a discount rate reflecting the utility's bad debt experience subject to periodic review and adjustment and the concomitant delivery rate unbundling of the associated credit, collection and billing functions; and 3) Application of a bad debt tracker.

B. Marketer Referral Programs

Marketer referral programs constitute a retail access best practice and are a low risk option through which consumers can learn about and participate in energy choice. Marketer referral programs provide benefit to all customers by informing them of competitive alternatives and stimulating the development and expansion of the competitive market. The prototypical model of a marketer referral program was first implemented in New York by Orange and Rockland under the moniker of Switch and Save, and it is now required for other utilities in the state.²⁰ The migration rate maintained in O&R has been in the range of 30+%. It is noteworthy that the NYPSC directed that, "purchase of ESCO [marketer] accounts receivable, especially when used with a Switch and Save approach, be considered in upcoming rates cases and during the course of current rate plans for utilities that agree to do so, because it has proven to be a model that works extremely well in jump-starting the energy market for residential and small commercial customers."²¹ The NYPSC found in its recent review of referral programs that,

While residential and other small commercial customers have been increasingly attracted to the retail market, ample opportunity exists to increase ESCO penetration into the market. The ESCO Referral Program is one tool for encouraging residential and small commercial customers to try the retail market, by reducing the risks they perceive and thereby overcoming the inertia that induces them to remain with the distribution utility. In addition, these customers traditionally rely on the utility to learn about

²⁰ NYPSC Case 07-M-0458, Order Determining Future of Retail Access Programs, issued October 27, 2008; NYPSC, Case 05-M-0858, Order Adopting ESCO Referral Program Guidelines and Approving an ESCO Referral Program Subject to Modifications, issued December 22, 2005; Order Adopting Orange and Rockland Utilities, Inc.'s Plan for an ESCO Referral Program, issued April 19, 2006; Order Adopting Consolidated Edison Company of New York, Inc.'s Plan for an ESCO Referral Program, issued April 19, 2006; Order Adopting Niagara Mohawk Power Corporation's Plan for an ESCO Referral Program, issued April 19, 2006.

²¹ NYPSC Case 00-M-0504, Retail Policy Statement, page 17.

choosing a service provider, and the referral programs perform that function.²²

As a practical example, marketers participating in the O&R program offer enrolling customers a seven percent introductory discount from the utility commodity rate for a period of two billing cycles. Customers are enrolled in the program when they contact Orange and Rockland directly about it or they can be referred to the program after having been informed about it by the utility's customer representative from an inbound call transaction (i.e., new service call, bill inquiry, etc.). O&R has promoted the program through advertising, bill inserts, and special events. Customers can request a specific marketer or be assigned to marketers on a random basis. The customer also has the option to return to utility service at any time. O&R purchases the receivables of marketers participating in this program. The residential migration rate in O&R exceeds thirty percent. The program provides benefits for all involved – consumers benefit from an introductory discount and risk free introduction to choice; marketers benefit from reduced customer acquisition costs and reduced bad debt exposure; and the utility benefits from a streamlined program that is inexpensive to implement and facilitates the migration process.

We also point out that the NYPSC is currently considering a proposal by ConEd²³ to expand its existing referral program to include new service customers.²⁴ Informing new service customers about their commodity options at the point of service initiation could

²² NYPSC Case 07-M-0458, Order Determining Future of Retail Access Programs, issued October 27, 2008, at pages 12-13.

²³ NYPSC Case 07-E-0523.

²⁴ In April 2006 when the Commission first approved ConEd's referral program for implementation, its electric migration rate was 242,317 customer accounts (7.7%) and its gas migration rate was 90,271 customer accounts (8.4%).²⁴ Recent Commission migration statistics for early 2008 show notable growth in that amount to nearly 650,000 accounts. Of those, over 85,000 accounts participated in PowerMove.

significantly and positively shift the current paradigm, whereby the utility is the presumptive commodity supplier, and marketers must expend significant amounts to overcome customer migration inertia inherent with that presumption. As such, designing a referral program to include new service customers could assist a great deal in leveling the playing field.

The concept of using marketer referral programs to facilitate retail market development is growing. For instance, the Illinois legislature recently required the consideration of referral programs for electric customers.²⁵ Referral programs have also been required in Connecticut²⁶ and Massachusetts²⁷ as well.

C. Retail Choice Ombudsmen

An integral element of facilitating retail market development is the institution of a retail choice ombudsman at each utility and at the Commission. For example, the Pennsylvania Public Utility Commission (PAPUC) recently ordered the formation of an Office of Competitive Market Oversight. The PAPUC concluded, "It is in the public interest to establish an independent unit within the Commission to oversee the development and functioning of the competitive retail natural gas supply market."²⁸ The concept has also been considered and implemented in other jurisdictions, such as Illinois. In Illinois, the Office of Retail Market Development is required to, "monitor existing competitive conditions in Illinois, identify barriers to retail competition for all customer classes, and actively explore and propose to the Commission and to the General Assembly solutions

²⁵ Illinois Retail Electric Competition Act of 2006, 220 ILCS 5/20-130(e).

²⁶ See Connecticut HB7432, An Act Concerning Electricity and Energy Efficiency of 2007.

²⁷ See Massachusetts Green Communities Act of 2008.

²⁸ Docket No. I-00040103F0002, Final Order and Action Plan, adopted September 11, 2008, at page 9.

to overcome identified barriers.”²⁹ Other notable examples include the Texas Public Utilities Commission’s electric Retail Market Oversight office, the New Jersey Board of Public Utilities’ Bureau of Market Development and System Reliability, and the Michigan Public Service Commission’s Competitive Energy Division.

The New York Public Service Commission’s decision to institute an Office of Retail Market Development was pivotal in accelerating that jurisdiction’s success in choice program advancement and consumer migration.³⁰ The NYPSC’s Office of Retail Market Development was charged with, “helping to create a level playing field for all market participants and ensuring that consumers have information needed to make informed choices when choosing an energy supplier.”³¹ Its responsibilities included:

- The ESCO [marketer] eligibility process;
- Utility migration reporting (including green power);
- The Power to Choose Web site and other competition related web content;
- Uniform Business Practices (UBP);
- Electronic data interchange (EDI) standards;
- Evaluation of utility retail access programs;
- Addressing disputes between ESCOs [marketers] and utilities; and
- Removal/reduction of barriers to entry into New York retail markets.³²

In essence, the Commission ombudsman should be a competitive market advocate. As such the Commission should be a main interface for competitive suppliers’ inquiries regarding retail choice and should field concerns about choice program policies. The Commission ombudsman may also be responsible for monitoring the status of competition and providing periodic reports to the Commission about what has been

²⁹ Illinois Retail Electric Competition Act, 220 ILCS 5/20-110.

³⁰ The NYPSC’s Office of Retail Market Development currently exists under the Office of Industry and Government Relations.

³¹ NYPSC Staff Report on the State of Competitive Energy Markets: Progress to Date and Future Opportunities, March 2, 2006 at page 31.

³² Id.

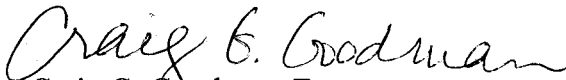
achieved and offering recommendations for next steps as may be warranted. Overall, the Commission ombudsman should be a consistent presence sending a clear signal to competitive suppliers, and the consumers they serve, of the Commission's commitment to competitive markets. The Commission ombudsman should be charged with oversight of utility implementation of the issues examined by this retail market working group.

Likewise, the designation of utility ombudsmen should facilitate a more expeditious resolution to supplier inquiries, questions and concerns. For a marketer doing business in multiple service territories and in multiple states, the ability to identify a "point person" at a utility to discuss an issue, and to be able to do so on a consistent basis, is quite valuable. In turn, the institution of utility ombudsmen should improve the quality of interactions between these stakeholders.

Conclusion

NEM believes the consumers of Arizona would be well-served through the implementation of a retail electric choice program in the State. We look forward to working with the stakeholders in this proceeding to achieve that goal.

Sincerely,



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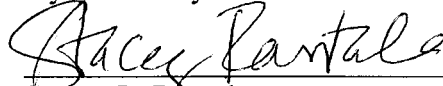
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Dated: January 29, 2009.

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon each person designated on the official service list in this proceeding.

Dated at Washington, D.C. this 29th day of January 2009.



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